

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**TIA THOMAS**

Claimant

VS.

**AMERICAN INSULATED WIRE**

Respondent

AND

**RELIANCE NATIONAL INDEMNITY COMPANY**

Insurance Carrier

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Docket No. 239,059

**ORDER**

Claimant appeals the May 10, 2001, Award of Administrative Law Judge Jon L. Frobish. Claimant was denied benefits for an injury to her low back occurring on July 20, 1998. Claimant was initially provided medical care for an injury suffered to her left leg. Respondent does not dispute the left leg injury. The Board held oral argument on November 13, 2001.

**APPEARANCES**

Claimant appeared by her attorney, Seth G. Valerius of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, Stephen J. Jones of Wichita, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopts the stipulations listed in the Award of the Administrative Law Judge. Additionally, the parties stipulated that the preliminary hearing transcript of April 7, 1999, is a part of the record and is properly before the Board for its consideration.

### ISSUES

Claimant suffered accidental injury on July 20, 1998, when she injured her left leg. Claimant contends that accident also injured her low back. Respondent contests claimant's allegations of a low back injury, arguing that claimant's injury was limited to her left leg only. The nature and extent of claimant's disability is the only issue before the Board for its consideration at this time.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record filed herein, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed with regard to claimant's low back, but modified to clarify that certain temporary benefits are awarded for the leg.

Claimant suffered accidental injury on July 20, 1998, when she fell off a ladder, injuring her left leg. Claimant contends she also injured her back at that time. However, none of the medical records or employment records created contemporaneous with that injury discuss the low back. A Supervisor's Accident Investigation Report, created on July 21, 1998, mentions only claimant's left leg. There is no indication of any back problem. This form, created by claimant's supervisor, Ron Gordon, contains a description of the injury indicating "bruised left leg." Additionally, there is a pain diagram, with claimant's lower left leg in the area of the calf circled. The form is signed not only by Mr. Gordon, but also by claimant.

Respondent also presented the testimony of George Colvin, process engineer for respondent. Mr. Colvin is in charge of safety and environmental issues, including handling work-related accidents. He was aware of claimant's injury on July 20, 1998, with the reported injury limited to her left shin or lower leg. There was no mention at the time of his investigation of a work injury to claimant's low back.

On August 28, 1998, claimant advised Mr. Colvin that she was having low back problems. However, when he asked the cause, claimant indicated that she had slept on a couch and that may have caused her to have back pain. Claimant was instructed to go to her personal physician for the back problems because they were not work related.

Jane K. Drazek, M.D., the medical director at Via Christi Rehabilitation Center, board certified in physical medicine and rehabilitation, examined claimant on January 14, 1999, at the request of claimant's attorney. At that time, claimant advised Dr. Drazek that she had fallen off a ladder, injuring both her leg and her low back. Dr. Drazek's history included complaints of immediate back pain. Dr. Drazek testified that, based upon that history, the back symptoms would be related to claimant's fall. However, on

cross-examination, Dr. Drazek was advised that claimant could not document back complaints until approximately one month after the alleged fall. Dr. Drazek testified that, if there were a direct trauma to the back on July 20, 1998, she would have anticipated immediate symptoms. It was noted that claimant met with Jack Bell, a physician's assistant, on July 30, 1998, at which time claimant underwent x-rays of her lower extremity. There was no mention during her examination by Mr. Bell of any back involvement. Dr. Drazek acknowledged that, if claimant had suffered a direct trauma to her back, she would have expected the pain symptoms to occur rapidly.

Respondent referred claimant to Philip R. Mills, M.D., board certified in physical medicine and rehabilitation, as well as electrodiagnostic studies, pain management and electrodiagnostic medicine. Dr. Mills is also a member of the American Board of Independent Medical Examiners.

Dr. Mills examined claimant on April 6, 2000. At that time, she gave Dr. Mills a history of falling from a step ladder and landing on her left leg. The history provided to Dr. Mills indicated an immediate onset of pain in claimant's left lower extremity. Dr. Mills also acknowledged that someone with trauma to the low back would experience pain rather quickly after suffering the accident. He testified that, if claimant did not suffer immediate pain after the injury and specifically within two or three days, then, in his opinion, the back pain would not be related to the incident on July 20, 1998.

Dr. Mills described claimant as being "sway back." He testified that her sway back condition primarily was caused by genetics and claimant's obesity. At the time claimant was examined by Dr. Mills, she stood 6 feet tall and weighed 256 pounds.

Dr. Mills testified that he did not feel claimant had any functional impairment or any limitations as a result of the July 20, 1998, injury. The leg injury had healed, and Dr. Mills attributed no portion of claimant's ongoing back complaints to the July 20, 1998, accident.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 1998 Supp. 44-501 and K.S.A. 1998 Supp. 44-508(g).

In order for a claimant to collect workers' compensation benefits, claimant must suffer accidental injury arising out of and in the course of her employment.

The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required

to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 689 P.2d 837 (1984).

The uncontradicted evidence in this instance is that claimant suffered accidental injury on July 20, 1998, to her left leg. That was not contested by respondent, and any medical treatment provided to claimant as a result of that injury was properly paid.

However, claimant has failed to prove a connection between her low back injury and the July 20, 1998, accident. The medical and personnel records contemporaneous with claimant's accident failed to mention any low back involvement. It was a nearly a month after claimant's accident that she first mentioned low back symptoms. Neither Dr. Drazek nor Dr. Mills attributed claimant's low back pain to her fall on July 20, 1998, when provided that specific history. While Dr. Drazek did attempt to tie the two together, she acknowledged that claimant's symptoms should have surfaced within two or three days.

The Appeals Board finds, based upon the record, that claimant's ongoing low back symptoms are related to her genetics and obesity, including the sway back condition diagnosed by Dr. Mills. The Appeals Board, therefore, affirms the Administrative Law Judge's denial of benefits for the low back injury alleged by claimant from the July 20, 1998, accident. All other issues presented are rendered moot as a result of these findings and conclusions.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Jon L. Frobish, dated May 10, 2001, should be, and is hereby, affirmed, and claimant is denied recovery for the accidental injury of July 20, 1998, for any injury suffered to her low back, but modified to award the medical treatment provided for the leg injury.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November, 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Seth G. Valerius, Attorney for Claimant  
Stephen J. Jones, Attorney for Respondent  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director